

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



75-1356

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

DOCKET #75-1356

WILLIAM RAMSDEN,

Appellant.

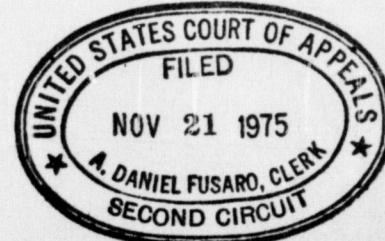
75-1356

APPELLANT'S APPENDIX

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK.

STANLEY SCHIMMEL

Attorney for Appellant  
32 Court Street  
Brooklyn, N. Y. 11201  
(212) 625-1200



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

INDICTMENT

- against -

AUDREY JOSEPH, JAMES GLASS  
and WILLIAM L. RAMSDEN,

Cr. No. 73-CR-1076  
(Title 21, USC, §841(a)(1),  
§846; Title 18, USC, §2)

Defendants.

12-20-73

----- X  
THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of October 1973, within the Eastern District of New York, the defendant AUDREY JOSEPH, the defendant JAMES GLASS, and the defendant WILLIAM L. RAMSDEN, knowingly, intentionally and unlawfully did possess with intent to distribute approximately four (4) ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1) and Title 18, United States Code §2.)

COUNT TWO

On or about the 15th day of October 1973, within the Eastern District of New York, the defendant AUDREY JOSEPH, the defendant JAMES GLASS, and the defendant WILLIAM L. RAMSDEN, knowingly, intentionally and unlawfully did attempt to distribute approximately four (4) ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, §841(a)(1). (Title 21, United States Code, §846 and Title 18, United States Code §2.)

Trama, J



A TRUE BILL.

FORGEAN.

NOTING UNDERSIGNED IS ATTORNEY  
EASTERN DISTRICT OF NEW YORK

No. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN District of NEW YORK

Criminal Division

THE UNITED STATES OF AMERICA

vs.

AUDREY JOSEPH, JAMES GLASS,

WILLIAM L. RALSTON

INDICTMENT

(T.21, USC, §841(a)(1), §846;  
T.18 USC, §2)

*A true bill,*

*Foreman.*

Filed in open court this ..... day  
of ..... A. D. 19 .....

*Clerk.*

*Ball, § \_\_\_\_\_*

No. 100  
CRIMINAL DOCKET

73 CR 1076

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## TITLE OF CASE

THE UNITED STATES

CLOSED

For U.S.: G. WOOD, A.D.A.  
 For JOSEPH: B. RAPPAPORT  
 66 Court St., Brooklyn, N.Y.  
 875-4305  
 For RAMSDEN: S. SCHIMMEL  
 186 Jerusalem Street, Brooklyn, N.Y.  
 MA6-6444  
 For GLASS: EUSKROTT &  
 SOMERSHINE, 186 Jerusalem  
 Street, 855-1111

Did possess with intent to distribute cocaine.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine. (GLASS)	1000.00	10/1/73	Pat. Rappaport (2 for) Lester		
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
12/20/73	Before NEAHER, J. - Indictment filed.
12/28/73	Before TRAVIA, J. - Case called- Deft and counsel present- Defts arraigned and each made a reading of the Indictment and each enter pleas of not guilty- 30 days for motions at request of deft- Bail cont'd
12/28/73	Notices of Appearance filed. (all defts)
1-17-74	Magistrate's file 73 M 1557 inserted into CR file.
1-18-74	Notice of readiness for trial filed
11-21-74	Before Neaher, J. - case called - adjd to Dec. 5, 1974 at 2:00 P.M.
12/5/74	Before NEAHER, J. - Case called- Counsel for deft Glass not present- Case adjd to 1/9/75 at 2:00 P.M.
1/9/75	Before NEAHER, J. - Case called- Case adjd to 1/27/75 at 4:00 P.M. for disposition

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**73 CR1076**

ATE	PROCEEDINGS	CLERK'S FORM	
		PLAINTIFF	DEFENDANT
7-25	Before NEAHER, J - case called - Defts JOSEPH & GLASS present with attys - deft RAMSEN not present - his counsel was present - case set for trial May 27, 1975 at 10:00 am.		
27-75	Before NEAHER, J - case called - defts present with attys - deft GLASS withdraws plea of not guilty and enters a plea of guilty to count 1 - sentence adjd without date - bail contd. Deft JOSEPH withdraws plea of not guilty and enters a plea of guilty to counts 1 and 2 - sentence adjd without date - bail contd - both defts advised of their rights by the court. Case adjd to June 30, 1975 as to deft RAMSEN., for trial at 10:00 am.		
30-75	Before NEAHER, J - case called - deft RAMSDEN & counsel Stanley Schimmel present - adjd to July 28, 1975 at 10:00 am for trial		
18-75	Before NEAHER, J - case called - defts JOSEPH & GLASS present with attys - deft JOSEPH sentenced pursuant to 18:4208(b) for study and report in 30 days. Deft to surrender to U.S.Marshal by 7-21-75 by 12:00 Noon. Deft GLASS sentenced under 18:4208(a)(2) to 2 years imprisonment with 3 years special parole term. Deft is also to pay a fine of \$1,000 - court recommends Allenwood,Pa. as place of incarceration. Execution of sentence is stayed until Aug. 18, 1975 at which time deft is to surrender to the U.S.Marshal by 12 Noon - On motion of AUSA Schall count 2 is dismissed.		
18-75	Judgment and Commitments filed for defts JOSEPH & GLASS - certified copies to Marshal for both defts.		
21-75	By NEAHER, J - Order releasing bail filed (JOSEPH)		
22/75	By NEAHER, J. - Order of surrender filed (GLASS)		
23-75	Certified copy of Judgment & Commitment retd and filed - deft JOSEPH delivered to WHD, Rikers Island awaiting removal to FRW, Alderson, West Va. for study.		
28/75	Before NEAHER, J. - Case called- Deft and counsel present-Deft Ramden moves to suppress the admissability of certain portions of tapes- motion argued- decision reserved- trial ordered and begun-Trial contd to 7/29/75 at 10:00 A.M.		
29-75	Before NEAHER, J - case called - deft RAMSEN & counsel Stanley Schimmel present - trial resumed - defts motion to suppress certain portions of the taped conversation - granted and denied -court rules that tape may be used to the extent that it is audible -Jurors selected and sworn - Govt opens - deft opens - Trial contd to July 30, 1975.		

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## CRIMINAL DOCKET

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DATE	PROCEEDINGS
7-30-75	Before NEAHER, J - case called - deft & counsel present (RAMSDEN & counsel Stanley Schimmel) trial resumed - Trial contd to July 31, 1975.
7-31-75	Before NEAHER, J - case called - deft RAMSDEN & counsel S. Schimmel present - trial resumed - defts motion for judgment of acquittal - decision reserved - deft rests - Govt rests - Jury retires to deliberate - trial contd to 8-1-75
7-31-75	By NEAHER, J - Order <del>fax</del> of sustenance filed
8/1/75	Before NEAHER, J. - Case called- Deft GLASS not present-counsel present deft's motion for extension of time to surrender- granted on condition that the Probation Dept and U.S. Marshal approve
8/1/75	Certified copy of Judgment and Commitment retd and filed- deft delivered to Womens Reformatory at Alderson W.Va (JOSEPH)
8/1/75	Before NEAHER, J. - Case called- Deft RAMSDEN and counsel present- Trial resumed-Jury resumes deliberations-Jury returns and renders a verdict of guilty on counts 1 and 2- jury discharged- deft's bail <del>contd</del> - <del>css</del> without date for sentence- Trial concluded
8/1/75	By NEAHER, J.- Order of sustenance filed
8-4-75	3 stenographers transcripts filed (pgs 1 to 371) (RAMSDEN)
8/5/75	Stenographer's transcript of 8/1/75 filed.
8-8-75	Certified copy of Judgment & Commitment retd and filed - deft GLASS delivered to Allenwood, Pa.
8-25-75	Stenographers transcript filed dated May 27, 1975.
9-17-75	Before NEAHER, J -case called - deft JOSEPH & counsel Bryan Rappaport present - imposition of sentence is suspended and the deft is placed on probation for 5 years. Special conditions of probation are that the deft continue with her education and psychotherapy.
9-17-75	Judgment and Order of Probation filed - certified copies to Probation (JOSEPH)
10-3-75	Before NEAHER, J - case called - deft RAMSDEN & counsel Stanley Schimmel by Robert Straus present - deft sentenced to imprisonment for 3 years on each of counts 1 and 2 to run concurrently pursuant to 18:3651 - to serve 6 months and balance of 30 months is suspended and the deft is placed on probation for 3 years with special parole term of 5 years. Court recommends imprisonment at Allenwood Prison Camp. Execution of sentence is stayed until 10-17-75 at which time the deft is to surrender at the particular prison by 4:

## PROCEEDINGS

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- Deft advised by the court of his right to appeal and is granted leave to appeal in Forma Pauperis. Financial Affidavit filed and Form A filed. Court directs the Clerk to file Notice of Appeal on behalf of the deft.
- 1-75 Judgment and Commitment and Order of Probation filed - certified copies to Probation and Marshal.
- 3-75 Notice of Appeal filed (without fee as to deft RAMSDEN)
- 3-75 Docket entries and duplicate of Notice mailed to the C of A together with Form A (RAMSDEN)
- 1/3/75 Stenographers Transcript dated 7/31/75 filed
- 1/14/75 Order received from court of appeals and filed that record be docketed on or before 10/22/75
- 1-15-76 Voucher for Expert Services filed. (RAMSDEN)
- 16/65 By NEAHER, J. - Order filed that surrender dated extended to 10/24/75
- 20/75 Certified copy of Judgment and Commitment retd and filed- deft to surrender to F.P.C. at Allenwood Pa on 10/24/75
- 1-13-75 Notice of Motion filed for reduction of sentence imposed (Class)

THE COURT: Members of the Jury, we are now

at the stage of trial where you are about to undertake your final functions as jurors. Your duty is a serious and important one. In performing it, you actively share with the Court the responsibility of administering justice according to law and the evidence in the case.

Your Oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality, and as was emphasized by me when you were selected as jurors, without bias or prejudice, for or against the Government or the defendant as parties to this controversy.

This case has been of short duration. The fact that the trial has been so brief in no respect reflects its relative importance. Every case, whether it takes a day, a week or a month, is important. The case is important to the Government, since the enforcement of criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to the defendant who is charged with a serious crime, and has the right to receive a fundamentally fair trial.

The community has an interest in that, too.

2

## 1 Charge of the Court

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2 Let me add, the fact that the Government is a  
3 party entitles it to no greater consideration than  
4 that accorded to any other party in a litigation.

5 By the same token, it is entitled to no less consider-  
6 ation.

7 All parties, Government and individuals alike,  
8 stand as equals alike before the bar of justice.

9 Your final role is to decide and pass upon the  
10 fact issues in the case.

11 You are the sole and exclusive judges of the  
12 facts.

13 You determine the weight of the evidence. You  
14 appraise the credibility of the witnesses. You draw  
15 the reasonable inferences from the evidence. You re-  
16 solve such conflicts as there may be in the evidence.

17 I shall later tell you how to determine the  
18 credibility of the witnesses. My final function is  
19 to instruct you on the law, and it is your duty to  
20 accept these instructions as to the law and to apply  
21 them to the facts as you may find them.

22 With respect to any fact matter, it is your  
23 recollection, and yours alone, that governs. As I  
24 have already told you, anything that counsel either  
25 for the Government or for the defense may have said

3

1

## Charge of the Court

486

2 with respect to matters in evidence in the trial and  
3 a question or argument or in Summation is not to be  
4 substituted for your recollection of the evidence.

5 So, too, anything that the Court may have said  
6 during the trial, or may refer to during the course  
7 of these instructions as to any matter in evidence is  
8 not to be taken in lieu of your own recollection.

9 Before we consider the precise charges against  
10 the defendant on trial, some preliminary matters should  
11 be noted.

12 When the Grand Jury returned the indictment in  
13 this case, three defendants were named, Audrey Joseph,  
14 James Glass, and William L. Ramsden, the defendant  
15 on trial.

16 That Audrey Joseph and James Glass are not on  
17 trial here is not a matter which should concern you.  
18 Those are matters which are solely within the juris-  
19 diction of the United States Attorney. You are to  
20 draw no inference, favorable or unfavorable, against  
21 the Government, or against the defendant on trial by  
22 reason of the absence of Joseph or Glass. Guilt is  
23 personal.

24 The guilt or innocence of this defendant on  
25 trial must be determined solely on the evidence presented

4 1

## Charge of the Court

2 against him, or the lack of evidence. The charges  
3 against him stand or fall on the proof or lack of  
4 proof against him, and not against those who were  
5 accused with him.

6 There are certain principles of law which  
7 apply in every criminal case, and to which I made  
8 reference and emphasized at the time of your selec-  
9 tion as jurors. I repeat them now: The indictment  
10 is merely an accusation. It is a charge and no  
11 evidence of proof of a defendant's guilt.

12 You will give no weight whatever to the fact  
13 that an indictment was returned which named William  
14 L. Ramsden as a defendant.

15 The defendant on trial has pleaded Not Guilty.  
16 Thus, the Government has the burden of proving the  
17 charges against him, beyond a reasonable doubt. He  
18 does not have to prove his innocence. On the contrary,  
19 he is presumed to be innocent of the accusations con-  
20 tained in the indictment.

21 This presumption of innocence was in his favor  
22 at the start of the trial, continued in his favor  
23 throughout the entire trial, is in his favor even as  
24 I instruct you now, and remains in his favor during the  
25 course of your deliberations in the jury room. It is

5

1

## Charge of the Court

2 removed only if and when you are satisfied the Govern-  
3 ment has sustained its burden of proving the guilt  
4 of the defendant beyond a reasonable doubt.

5 The question that naturally comes up is, What  
6 is a reasonable doubt. The words almost define them-  
7 selves, that there is a doubt founded in reason, and  
8 arising out of the evidence in the case, or the lack  
9 of evidence. It is a doubt which a reasonable person  
10 has after carefully weighing all of the evidence.

11 Reasonable doubt is a doubt which appeals to your rea-  
12 son, your judgment, your common sense, and your exper-  
13 ience. It is not caprice, whim, speculation, conjec-  
14 ture or suspicion. It is not an excuse to avoid the  
15 performance of an unpleasant duty.

16 It is not sympathy for a defendant. If, after  
17 a fair and impartial consideration of all of the evi-  
18 dence in this case you can candidly and honestly say  
19 you are not satisfied of the guilt of the defendant,  
20 that you do not have an abiding conviction of his guilt,  
21 in sum, if you have such a doubt, that would cause you  
22 as a prudent person to hesitate before acting in mat-  
23 ters of importance to yourselves, then you have a  
24 reasonable doubt, and in that circumstance, it is your  
25 duty to acquit.

2 On the other hand, if, after such an impartial  
3 and fair consideration of all of the evidence, you can  
4 candidly and honestly say you do have an abiding con-  
5 viction of the defendant's guilt, such a conviction  
6 as you would be willing to act upon in important and  
7 weighty matters of personal affairs in your own life,  
8 then you have no reasonable doubt, and under such cir-  
9 cumstances it is your duty to convict.

10 One final word on this subject: Reasonable  
11 doubt does not mean a positive certainty or beyond all  
12 possible doubt. If that were the rule, few persons,  
13 however guilty they might be, would be convicted. It  
14 is practically impossible for a person to be absolutely  
15 and completely convinced of any controverted fact,  
16 which by its nature is not susceptible to mathematical  
17 certainty. In consequence, the law in a criminal case  
18 is that it is sufficient if the guilt of the defendant  
19 is established beyond a reasonable doubt, and not be-  
20 yond all possible doubt.

21 Now, let us turn to the charges contained in  
22 the indictment, which I will again read to you.

23 Count One reads:

24 "On or about the 15th day of October 1973, with-  
25 in the Eastern District of New York, the defendant  
Audrey Joseph, the Defendant James Glass, and the de-

2 defendant William L. Ramsden, knowingly, intentionally  
3 and unlawfully did possess with intent to distribute  
4 approximately four (4) ounces of cocaine hydrochloride,  
5 a Schedule II Narcotic Drug Controlled Substance.

6 Count Two:

7 "On or about the 15th day of October 1973, with-  
8 in the Eastern District of New York, the defendant  
9 Audrey Joseph, the defendant James Glass, and the de-  
10 fendant William L. Ramsden, knowingly, intentionally  
11 and unlawfully did attempt to distribute approximately  
12 four (4) ounces of cocaine hydrochloride, a Schedule  
13 II Narcotic Drug Controlled Substance, in violation of  
14 Title 21, United States Code, Section 841(a)(1).

15 (Title 21, United States Code, Section 846 and Title  
16 18, United States Code Section 2.)."

17 Now, in summary, you will note first the defen-  
18 dant has been charged in Count One with possession of  
19 four ounces of cocaine, with intent to distribute, in  
20 violation of a Federal Law known as the Drug Abuse  
21 Prevention and Control Act.

22 Count One alleges that he did this with Audrey  
23 Joseph and James Glass on or about October 15, 1973.

24 Second, Count Two charges the defendant with  
25 attempting to possess a quantity of cocaine hydrochlor-

2 ide, with the intent to distribute it. The first is  
3 the possession, and the second is attempting to dis-  
4 tribute. This is also in violation of the Federal  
5 Drug Act. Again in this Count he is alleged to have  
6 done this with Audrey Joseph and James Glass on the  
7 same date, October 15, 1973.

8 Now, the Congressional purpose expressed in  
9 the Drug Act was to exercise Federal control in order  
10 to prevent trafficking in or improper use of drugs  
11 having a substantial and detrimental effect on the  
12 health and general welfare of the American people.

13 Criminal penalties or fines or both are provided  
14 in the Act. The provisions upon which the charges in  
15 this indictment are based read in pertinent part as  
16 follows:

17 "Section 841(a): It shall be unlawful for any  
18 person knowingly or intentionally to possess with in-  
19 tent to distribute or dispense a controlled Substance.

20 "Section 846, Any person who attempts to commit  
21 any offense defined in this subchapter is punishable  
22 by imprisonment, fine or both."

23 Before I spell out what the Government must  
24 prove in order to establish violations of the foregoing  
25 statutes, there are certain terms in them which require

## 9      1      Charge of the Court

2      explanation.

3      Section 841 requires that the possession be  
4      done knowingly or intentionally. The purpose of the  
5      word "knowingly" is to insure that no one shall be  
6      convicted for an act done because of mistake or acci-  
7      dent or other innocent reason.8      And act is done knowingly if done voluntarily  
9      and intentionally, that is, deliberately.10     A transaction is not intentional unless it is  
11     knowing, so the two words "knowingly or intentionally"  
12     may be considered together. The words were "intent  
13     distribute," "with intent to distribute," simply mean  
14     that the narcotics or Controlled Substance as it is  
15     called in the Act are not possessed for one's own per-  
16     sonal use, but are intended for sale, delivery, trans-  
17     fer, or to be made another to another person. The  
18     word "possess" as used in the statute is understood  
19     in law to describe two types of possession, actual  
20     possession or constructive possession. The actual  
21     possession means that a defendant knowingly has person-  
22     manual, physical control of drugs. Constructive posses-  
23     sion means that although the drugs are in the physical  
24     possession of another person, a defendant knowingly  
25     has the power to exercise control over them or their

10 1 Charge of the Court

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2 distribution, that is, to set the price for their sale,  
3 or to cause their delivery.

4 Finally, a word about the terms "Controlled  
5 Substance." Those terms are used because the law  
6 applies to a broad range of narcotic drugs and sub-  
7 stances which have drug-like effects. The cocaine  
8 hydrochloride referred to in the indictment commonly  
9 known as cocaine is a Narcotic Controlled Substance  
10 covered by Section 841.

11 I will turn to Count One, which charges the  
12 defendant with possessing four ounces of cocaine with  
13 intent to distribute on or about October 15, 1973.  
14 Before the defendant may be convicted on that Count,  
15 the Government must establish beyond a reasonable doubt  
16 the following essential elements: One, that on or about  
17 the date mentioned the defendant William L. Ramsden  
18 in fact possessed with intent to distribute a Narcotic  
19 Controlled Substance, i.e., cocaine hydrochloride.  
20 When I use the word "possessed" there, it may be as I  
21 said, either in the actual sense or in the construc-  
22 tive sense, which I have just described.

23 Item Two, element two, that he did so knowingly  
24 or intentionally.

25 Element Three, that the Narcotic Controlled



5pm  
r/nc

1 Charge

18  
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2 THE COURT: (Continuing) First, the Government  
3 does not claim it has direct evidence that the  
4 defendant Ramsden personally had possession of the  
5 cocaine. Rather, it claims that the cocaine came  
6 into the physical possession of the other two people  
7 named in those counts, Audrey Joseph and James Glass,  
8 who it claims were acting in association with the  
9 defendant Ramsden, he being the one who had the  
10 power to effect the distribution and sale of the  
11 narcotics or otherwise exercise control over them.

12 I will tell you what I mean by direct evidence  
13 and circumstantial evidence in just a moment.

14 The second point I want you to keep in mind  
15 with respect to this first count is, where two or  
16 more persons are charged with the commission of what  
17 we call a substantive crime, that is, actually doing  
18 something in violation of law, the guilt of any defendant  
19 may be established without proof that he  
20 personally did every act constituting the offense  
21 charged.

22 This is so because under Section 2 of Title  
23 18, United States Code, every person who wilfully  
24 participates in the commission of a crime may be  
25 found to be guilty of that offense.

1 2

## Charge

2 Section 2 reads as follows:

3 "Whoever commits an offense against the  
4 United States or aids, abets, counsels, commands,  
5 induces or procures its commission, is punishable as  
6 a principal. Whoever wilfully causes an act to  
7 be done, which if directly performed by him or another  
8 would be an offense against the United States, is  
9 punishable as a principal."

10 Under this statute, it is not even necessary  
11 that the aider or abettor be present at the actual  
12 commission of the offense.

13 This indictment also makes a charge under  
14 that statute as against the defendant on trial.  
15 I caution you, however, that the mere presence and  
16 guilty knowledge on the part of a person would not  
17 suffice to make him an aider and abettor. You must  
18 be convinced beyond a reasonable doubt that he was  
19 knowingly doing something to assist in accomplishing  
20 the crime.

21 To determine whether a defendant aided and  
22 abetted the commission of an offense, you ask yourself  
23 these questions:

24 Did he associate himself with the venture?  
25 Did he participate in it, as something he wished to

## 1                   3                   Charge

2                   bring about? Did he seek by his action to make it  
3                   succeed? If he did, then he is an aider and abettor.

4                   Accordingly, you may find the defendant guilty  
5                   of the offense of knowingly and intentionally possess-  
6                   ing cocaine with intent to distribute it, if you find,  
7                   beyond a reasonable doubt that Audrey Joseph and  
8                   James Glass committed the offense and that the  
9                   defendant aided and abetted them.

10                  Now, let's turn to Count Two, which as I told  
11                  you, charges the defendant along with the other two  
12                  named with an attempt to distribute the same quantity  
13                  of cocaine mentioned in Count One. To attempt to  
14                  commit an offense means to do some act wilfully in  
15                  an effort to bring about or accomplish something  
16                  the law forbids to be done. In this case, the  
17                  distribution of cocaine. It is not necessary that  
18                  the attempt succeed. In fact, most charges of  
19                  attempt to commit a crime are brought precisely  
20                  because the crime failed.

21                  An act is done wilfully, in the sense of my  
22                  definition of attempt, if it done voluntarily and  
23                  intentionally. Those are terms I have already  
24                  explained to you. That is, with the specific intent  
25                  to do something the law forbids, with a bad purpose,

## Charge

in other words, to disregard or disobey the law.

With the foregoing instructions in mind,  
let us now turn to the evidence bearing upon the  
charge in the indictment.

By evidence I mean, of course, all the testimony you have heard, except any which I have instructed you to disregard. Whether that evidence is brought out on direct examination or cross-examination.

All the exhibits admitted into evidence, regardless of who introduced them and all stipulations of fact. You will recall that one of the stipulations of fact here was that Government's Exhibit 1 and the four packages which made it up were analyzed by a chemist of the Drug Enforcement Administration and found to contain a certain percentage of cocaine.

And there is also, as I recall, a further stipulation that it is undisputed that at least from the time that package of cocaine was picked up on the floor after the arrest made by Agent Siegel and found its way to the Drug Enforcement Administration and here to court, it is the same cocaine, not something else. Even though there is no dispute about that exhibit, your function as judges of the fact require you to find beyond a reasonable doubt

## Charge

that the substance contained in Government Exhibit 1  
is in fact cocaine hydrochloride.

If you so find, then I instruct you, as a matter of law, it would fulfill the requirement of a narcotic controlled substance as specified in the Drug Act. Since counsel for the Government and the defendant have reviewed in considerable detail the evidence in this case and emphasized their respective contentions, such comments as I make will deal with it in rather broad terms and are intended solely to assist you in focusing upon the issues of fact you will have to decide.

First, as I said a moment ago, there are two kinds of evidence, direct and circumstantial:

Direct evidence is where a witness testified to what he saw, heard and observed and what he knows of his own knowledge.

That which comes to him by virtue of his  
senses.

Circumstantial evidence is where facts are established from which in terms of common experience one may logically infer other facts that are sought to be established. A familiar example I often give here is this: We are in this room without windows.

2 When you were last outside the sun was shining  
3 and for all you know, you may consider that it is  
4 still shining.

5 But the door opens and in walks a man and he's  
6 carrying a dripping umbrella and he's got rain on his  
7 shoulders and you immediately reach the conclusion  
8 that the weather has changed outside. Right?

9 That is what we mean by one fact which is  
10 only circumstantial evidence leading to the con-  
11 clusion you draw with respect to the condition of  
12 the weather outside.

13 Circumstantial evidence, if believed, is of  
14 no less value than direct evidence, for in either case  
15 you must be convinced beyond a reasonable doubt of  
16 the guilt of the defendant.

17 In this case, the Government relies upon both  
18 direct and circumstantial evidence.

19 It contends that throughout the testimony of  
20 Agent Siegel, it has, in addition to circumstantial  
21 evidence, offered direct proof of the defendant's  
22 participation in the alleged possession and attempt  
23 to distribute cocaine as charged in Counts One and  
24 Two.

25 The defendants, on the other hand, maintains  
that while he was present at 251 Kane Street on the

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## Charge

2 evening in question, he was there for an initial  
3 innocent purpose, unaware of what was going on, as  
4 he said, in the apartment upstairs.

5 Whether the defendant knowingly and inten-  
6 tionally participated with Audrey Joseph and James  
7 Glass in the substantive offenses alleged, whether  
8 he was there that evening by accident or by decide,  
9 obviously present issues of fact and questions of  
10 credibility.

11 Clearly, this concerns what is in a man's  
12 mind. Medical science has not yet devised an  
13 instrument whereby we can go back to the time of the  
14 occurrence of the events and determine what then  
15 was a person's intent or knowledge. These may be  
16 determined from -- only from one's acts, his conduct  
17 and surrounding circumstances and such inferences  
18 as may reasonably be drawn therefrom.

19 In this case, on the issue of the defendant's  
20 knowledge, you were permitted to hear tapes conver-  
21 sation. You remember first there were a number of  
22 telephone calls between Agent Siegel and James Glass  
23 and then later on you have heard the tape recording  
24 of the Kel set transmission that took place at the  
25 house in question, at the time certain events were

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## Charge

2 taking place.

3 As I told you, it is what you heard or were  
4 able to hear on those tapes that matters, not what  
5 you saw in the transcripts which were handed to you  
6 for assistance in attempting to hear clearly what  
7 had been said.8 I have purposely not adverted to all the  
9 evidence upon which the government and the defendant  
10 rely to support their respective contentions. It  
11 must be clear to you that the basic issue you have  
12 to decide here is whether William Ramsden, the  
13 defendant on trial, was at a house that evening by  
14 accident, in the sense that he was there for an  
15 innocent reason or was he there by design.16 You have to decide whether or not, as the  
17 Government alleges, and has attempted to prove  
18 through the evidence offered, that he was the source  
19 of Government's Exhibit 1 or whether there was some  
20 other source.21 If you cannot make up your mind on that issue,  
22 you must acquit the defendant. All evidence, whether  
23 or not I have referred to it or counsel have mentioned  
24 it in their summations is important and must be  
25 considered by you.

2 In anything I have said about testimony I  
3 have sought to state the substance thereof with  
4 complete accuracy. However, if per chance any  
5 reference to testimony I may have made does not  
6 agree with your recollection -- and I have stated  
7 this before -- you are to disregard such references  
8 by me and I emphasize this as strongly as words can  
9 convey meaning -- always it is your recollection  
10 and yours alone that governs and you must unhesita-  
11 tingly reject any statement as to a fact which I  
12 have made which does not accord with your own  
13 recollection.

14 It must be apparent to you that the versions  
15 of the Government and the defense are a sharp diver-  
16 gence on key points and that critical issues of fact  
17 and credibility are raised.

18 You are called upon to decide the fact issues  
19 here. How do you decide them? Now, I think you  
20 understand why at the start of the trial I suggested  
21 it would be desirable and important for you not only  
22 to listen but to look at the witnesses as they  
23 testify.

24 Your determination of the issue of credibility  
25 must depend upon the impression that a witness made

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## Charge

2 upon you as to whether or not he was telling you the  
3 truth or giving you an accurate version of what  
4 occurred.

5 I often say to jurors, when you walk in the  
6 door of this courtroom and sit in the jury box, while  
7 the trial is going on and later when you are deliber-  
8 ating in the jury room, you have your common sense,  
9 your good experience with your. You decide whether  
10 or not a witness was straightforward and truthful,  
11 whether he attempted to conceal anything, whether  
12 he has a motive to testify falsely, whether there  
13 is any reason why he might color his testimony.

14 In other words, what you try to do, to use  
15 the vernacular, is to size a person up just as you  
16 would do as I have said before, in any important  
17 matters where you were undertaking to determine  
18 whether or not a person is truthful, candid and  
19 straightforward.

20 In passing upon the credibility of a witness  
21 you may also take into account inconsistencies or  
22 contradictions as to material facts in his own  
23 testimony or any conflict with that of another witness.  
24 A witness, however, may be inaccurate, contradictory  
25 or even untruthful in some respects and yet be

2 entirely credible in the essentials of his testimony.

3 The ultimate question for you to decide, in  
4 passing upon credibility, is, did the witness tell  
5 the truth here before you as to essential matters.

6 The fact that a Government witness, indeed, the prin-  
7 cipal Government witness, was a Government law officer  
8 does not entitle his testimony to any greater weight  
9 or consideration than that afforded to any other  
10 witness in the case.

11 You will evaluate his credibility the same  
12 way you do that of any other witness. If you find  
13 that any witness == and this applies alike to Govern-  
14 ment and defense -- wilfully testified falsely as to  
15 any material fact, you have a right to reject the  
16 testimony of that witness in its entirety.

17 Or you may accept that part or portion which  
18 commands itself to your belief as credible. The  
19 law permits but does not require a defendant to  
20 testify in his own behalf. The defendant on trial  
21 has taken the witness stand.

22 Obviously, he has a deep personal interest  
23 in the result of his prosecution. Indeed, it is fair  
24 to say he has the greatest stake in its outcome.

25 Interest creates a motive for false testimony. The

1  
2 Greater the interest, the greater the motive, and a  
3 defendant's interest in the result of his trial is of  
4 a character possessed by no other witness.

5 In appraising his credibility, you may take  
6 that fact into consideration. However, it by no means  
7 follows that simply because a person has a vital  
8 interest in the end result, that he is not capable  
9 of telling a truthful, candid and straightforward  
10 story.

11 It is for you to decide to what extent, if  
12 at all, his interest has affected or colored his  
13 testimony.

14 The defendant has called a witness, George  
15 Herzog, who testified to his character, or more  
16 correctly, to his reputation in the community for  
17 honesty, truthfulness and integrity. You should  
18 consider such evidence, together with all the other  
19 evidence in determining his guilt or innocence.

20 Evidence of good reputation may in itself  
21 create a reasonable doubt, where without such  
22 evidence, no reasonable doubt would exist.

23 But if from all the evidence you are satisfied  
24 beyond a reasonable doubt that the defendant is guilty,  
25 a showing that he previously enjoyed the reputation

1 of good character does not justify or excuse the  
2 offense and you should not acquit him merely because  
3 you believe he has been a person of good repute.

4 During the course of the trial the attorneys  
5 at various times have objected to certain questions,  
6 have moved to strike answers and taken other pro-  
7 cedural positions before you. These are matters  
8 of technical procedure that are the proper concern  
9 of the attorneys and should not concern you.

10 I instruct you that you are not to draw any  
11 inferences from the fact that attorneys have made  
12 objections and motions before you during the trial.  
13 The Government, to prevail, must prove the essential  
14 elements by the required degree of proof as already  
15 explained in these instructions.

16 If it succeeds, your verdict should be guilty;  
17 if it fails, it should be not guilty. The verdict  
18 as to each count must be unanimous. Your verdict is  
19 not to be based, as I said before, on suspicion,  
20 speculation, conjecture or surmise. Your function  
21 is to weigh the evidence in the case and to determine  
22 the guilt or innocence of the defendant solely  
23 upon the basis of such evidence and these instructions.

24 Under your oath as jurors, as I mentioned.

2 previously, you cannot allow a consideration of the  
3 sentence which may be imposed upon the defendant if  
4 he is convicted to enter into your deliberations or  
5 to influence your verdict in any way.

6 Your duty is to decide the case solely and only  
7 upon the evidence. In the event of a conviction,  
8 the duty of imposing sentence rests solely with the  
9 Court.

10 Each juror is entitled to his or her own  
11 opinion, but each should, however, exchange views  
12 with his fellow jurors. That is the very purpose  
13 of jury deliberation, to discuss and to consider the  
14 evidence, to listen to the arguments of fellow  
15 jurors, to present your individual views, to consult  
16 with one another and to reach an agreement based solely  
17 and wholly on the evidence, if you can do so without  
18 violence to your own individual judgment.

19 Each one must decide the case for himself or  
20 herself after consideration with his or her fellow  
21 jurors. But you should not hesitate to change an  
22 opinion, which after discussion with your fellow  
23 jurors, appears erroneous. However, if after  
24 carefully considering all the evidence and the  
25 arguments of your fellow jurors you entertain a

2 conscientious view that differs from others, you are  
3 not to yield your judgment simply because you are  
4 outnumbered or outweighed.

5 Your final vote must reflect your conscientious  
6 view as to how the issues should be decided. The  
7 charges here are serious. The just determination of  
8 this case is important to the public. It is equally  
9 important to the defendant. Under your oath as jurors  
10 you must decide this case without fear or favor  
11 and solely, as I have stated any number of times,  
12 in accordance with the evidence and the law.

13 If the Government has failed to carry its  
14 burden as to the defendant, your sworn duty is to  
15 acquit. If it has carried its burden as to the defen-  
16 dant, you must not flinch from your sworn duty, you  
17 must convict.

18 All right, members of the jury.

19 Is the Marshal here? All right.

20 I am going to let you retire to consider  
21 your verdict. Juror NO. 1, as is our custom, will  
22 be your foreman.

23 If during your deliberations you wish to  
24 communicate with the Court, you do so by writing a  
25 note and giving it to the Marshal who guards your  
door.



